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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-91

R. W. JONES, SR., et al.,

Petitioners,

versus

CHARLES T. WOLF, et al.,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA**

BRIEF FOR RESPONDENTS IN OPPOSITION

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STATEMENT OF THE CASE

Respondents are in general agreement with the Statement of the Case set forth in the Petition for Certiorari. However, we believe that certain points need clarification for a complete understanding of this litigation.

Petitioners leave the impression in their Statement that respondents immediately removed Petitioners' names from the church roll and completely denied

them all access to the church property. (Pet., pp. 3, 5). This is simply not the case. Following the adoption of the Resolution on May 27, 1973, petitioners and the class they represent met and carried on their church activities at various locations in Macon other than 2193 Vineville Avenue. (R. 164). On June 3, 1976, three years after they began carrying on church activities elsewhere and two years after they instituted this litigation, their names were removed from the membership roll. (R. 293). Respondents have denied Petitioners access to the church property, but only as a local unit of the Presbyterian Church in the United States.¹

Petitioners refer to several portions of the Book of Church Order dealing with the powers of various levels in the denomination, church courts and the like. Respondents have no particular quarrel with their description of the structure of the PCUS. However, as we have maintained throughout this litigation, the present law in Georgia concerning church property disputes places no significance on the actions of any church judicatories, but is concerned only with the portions of the general church constitution dealing with church property. Sections 6-1 and 6-2 of the Book

¹ This case was not tried in the usual sense but was submitted to the Superior Court of Bibb County upon an agreed Stipulation of Facts. (R. 162-299). The statement by the trial court concerning access, App. 5a, was based on this Stipulation which provides as follows: "The defendants and the class they represent have at all times since May 27, 1973, retained possession, dominion and control of all property and assets of the Vineville Presbyterian Church, to the complete exclusion of utilization of any of said property by plaintiffs, and the class they represent, as a local unit of the Presbyterian Church in the United States, but not otherwise." (R. 164) (emphasis added).

of Church Order deal with the property of a local church, and these are the only sections which were considered by the courts below.²

In their description of the opinion of the trial court, Petitioners refer out of context to a portion of the decision dealing with the findings of the Administration Commission, (R. 106) and leave the impression that the trial court improperly sought to resolve a religious issue as to who the denomination can recognize as its true local congregation. Again, this is simply not the case.

In the trial court and before the Supreme Court of Georgia, the Petitioners argued that they are in fact the record trustees of the property of Vineville Presbyterian Church and should be so recognized and declared by the courts. This contention was based on a document recorded in the Superior Court of Bibb County on February 1, 1974 which names the Petitioners, R. W. Jones, Sr., Robert E. Lucas and Ralph Mignerey as trustees of the church's property.³ This document was in turn based on the findings of the Administrative Commission (R. 106) that Petitioners are recognized by the denomination as the true local congregation of the church.

² Petitioners refer to Section 6-3 which deals with the situation where a church is dissolved or ceases to exist. There has never been any contention in this litigation that Vineville Presbyterian Church has ceased to exist. To the contrary, Petitioners have steadfastly maintained that they are the "true" church.

³ This document is not a part of the Record, but is referred to in Paragraph 13 of the Complaint (R. 7). Respondents admitted that the instrument was recorded (R. 115) but denied that it had any bearing on the outcome of the litigation and asked the trial court to declare it illegal, void and a nullity.

The trial court based its decision on the Georgia Supreme Court's opinion in *Carnes v. Smith*, 236 Ga. 30, 222 S.E. 2d 322, cert. denied 429 U.S. 868, (1976).⁴ It found that there was no basis in the deeds to the property, the applicable Georgia statutes, the Book of Church Order or the church's charter "to indicate any express or implied trust in favor of any group other than the local congregation of VPC". App. 9a. Then, in the paragraph referred to by Petitioners, it dealt with their arguments about the Administrative Commission and the instrument on record and held that these documents could not create any trust relationship "when none previously existed, expressly or by implication . . ." App. 9a. The trial court did not in any manner seek to limit the power of the denomination to recognize any group it wants to as a part of that body. It merely pointed out that these sorts of after-the-fact deliberations could not change the outcome dictated by *Carnes*.

Respondents do not agree with Petitioners' description of this Court's holding in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), as further discussed in our Argument.

Finally, Petitioners do not appear to have complied with Rule 23(f) of this Court which requires that they set forth the stage in the proceedings below when the federal question sought to be reviewed was first raised and the way this question was passed upon by the lower courts. Their position seems to be that under the

⁴ This is the most recent case in Georgia on resolving church property disputes in a connectional denomination and was the basis for the decisions of the trial court and the Supreme Court of Georgia. This case is not discussed or cited in the Petition.

First Amendment and *Serbian Eastern Orthodox Diocese, supra*, the only permissible method of resolving church property disputes is the American version of the implied trust doctrine. However, in the courts below, they based their case on *Carnes v. Smith, supra*, and never advanced the contention that the approach mandated by that case contravenes the First Amendment.

REASONS FOR DENYING THE WRIT

1.

The decisions below are not in conflict with any of the First Amendment decisions of this Court including *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*.

2.

Under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) this Court cannot fashion general common law rules to supersede state laws for the resolution of church property disputes.

3.

This case would make a singularly inappropriate vehicle to review the decisions of any other state to determine if they are in conformity with the First Amendment principles laid down by this Court.

ARGUMENT

I.

Petitioners urge this Court to grant the writ based on their contention that the Georgia courts have ignored this Court's teachings in *Serbian Eastern Orthodox Diocese v. Milivojevich*, *supra*. This simply is not the case. Neither the trial court nor the Supreme Court of Georgia made any attempt whatsoever to resolve any questions of religious law, custom, polity or doctrine. Their decisions recognize and are strictly in accord with the rule that "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969) (hereinafter, *Hull*).

In *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E. 2d 690 (1968) the Supreme Court of Georgia sanctioned the use of the English view⁵ of the implied trust doctrine and upheld the decision of the trial court which was based on a jury finding that the denomination had abandoned the original tenents of faith and practice.

This court granted certiorari and reversed. *Hull*, *supra*. It held that the First Amendment severely

⁵ See *Craigdallie v. Aikman*, 1 Dow. 1, 3 Eng. Rep. 601 (H.S. 1813); *Attorney General ex. rel. Mander v. Pearson*, 3 Mer 353, 36 Eng. Rep. 135 (Ch. 1817).

circumscribes the role that civil courts can play in determining church property disputes, and that it prohibits any civil court litigation concerning faith and practice. Although civil courts are not prohibited from deciding a property case because it involves a church, they must fashion rules and formulas which do not impinge on First Amendment values.

On remand, the Supreme Court of Georgia noted that its view concerning departure-from-doctrine had been eliminated,⁶ and proceeded to abandon the implied trust doctrine as a method of resolving church property disputes:

"This being the case, the entire theory must fall. Since Georgia chose to adopt the implied trust theory with this element as a condition, this court must assume that it would not have adopted the theory without this mode of protecting the local churches.

"Therefore, a part of the rule having been stricken, the remainder falls with it, and there is no implied trust on the property in controversy." 225 Ga. at 260.

Seven years later, the Supreme Court of Georgia was again faced with a church property dispute arising in a connectional denomination, the United Methodist Church. *Carnes v. Smith*, *supra*. The trial

⁶ "Since the Georgia courts on remand may undertake to determine whether petitioner is entitled to relief on its cross-claim, we find it appropriate to remark that the departure-from-doctrine theory can play no rule in any future judicial proceedings." 393 U.S. at 450.

court had awarded the use of the property to the Bishop and other representatives of the denomination. On appeal the Supreme Court again stated that it was not following the implied trust doctrine, but referred to language in its decision on remand in *Eastern Heights* which left open the possibility of awarding the use of the property to the denomination based on "other factors" and not the mere connectional relationship between a local and general church.

It then adopted the Maryland approach which was generally sanctioned by this Court in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 A.2d 162 (Md. 1969), app. dismissed, 396 U.S. 367, and found that statutes corporate charters, the language in relevant deeds and the organizational constitutions of a denomination qualify as "neutral principles" under the developing case law. It concluded that there were indeed "other factors" present in the case upon which a trust was found in favor of the denomination, primarily because the Discipline of the United Methodist Church clearly provides that all property at all levels of the denomination is held in trust for the United Methodist Church. There is no such provision in the Book of Church Order, and in fact the only provisions which deal with local church property provide that the trustees or corporate officers shall act solely under instructions of the congregation which they serve.⁷

⁷ Section 6-1 deals with trustees of an unincorporated local church and provides in part: "In the fulfillment of their duties such trustees shall be subject always to the authority, and shall act solely under the instructions, of the congregation which they serve as trustees." Section 6-2 deals with an incorporated church in which all members are members of the corporation and provides in part: "In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation." Title to part of the property in issue is held by trustees; the remainder is held by the local church corporation.

In the instant case the Supreme Court of Georgia simply followed its holding in *Carnes, supra*, and after reviewing the "other factors" in the record concluded that there was no basis to award use of the property to the denomination or any group recognized by the denomination.

Petitioners contend that this holding was in error because the Supreme Court did not defer entirely to the holding of a higher church judicatory. As we point out in Part II of our Argument, no case decided by this court including *Serbian Eastern Orthodox Diocese* requires any such result.

In a related vein petitioners also find fault with the result reached below because the court stopped its inquiry into the Book of Church Order at the provisions dealing with the property of a local church and did not rely on provisions dealing with the powers vested in the various levels of the church (none of which deal with property) and various "implementing guidelines" promulgated by the denomination. Petition, n.9. Not only were these "implementing guidelines" absent from the record below, but any such inquiry would violate the threshold rule concerning civil court determination of ecclesiastical matters.

Petitioners also contend that the result reached by the Supreme Court of Georgia violates the First Amendment because it amounts to a rule of neutral principles of majority rule. The short answer to this argument is the result reached in *Carnes v. Smith, supra*. In that case, the trial court found that the property was held in trust for the use of the ministry and

members of the United Methodist Church and enjoined the local trustees from interfering with that use. The United Methodist Church has won two other cases in Georgia where there were few if any loyal members of the local congregation. *United Methodist Church v. Sparrow*, No. 6881 (Superior Ct. of Dooley Co., 1976); *United Methodist Church v. Doolittle*, No. 1359 (Superior Ct. of Washington Co., 1974).

The choice by a state to adopt the implied trust rule as urged by petitioners is clearly result orientated. Virtually all church litigation is precipitated by disputes over doctrine and/or policy. The implied trust rule insures that the views of the denomination and the group loyal to it will be vindicated, at least insofar as the use of any property is concerned. On the other hand, the approach adopted by Georgia is completely neutral with respect to any predetermined results. Such approach follows from the judicious advice of this Court in the *Hull* decision⁸ and leaves the result to interaction between various levels in any particular denomination as to whether there is to be any general control over local church property. It then reviews the results of this interaction in a completely neutral fashion, and reaches a decision which may or may not turn on a majority vote, but which in all events does not vindicate the beliefs of either side in the underlying controversy.

⁸ "Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require civil courts to resolve ecclesiastical questions." 393 U.S. at 449. (emphasis added)

II.

A.

Although the parties in this case represent two factions of a local church congregation, the complaint seeks an injunction to put the Petitioners into possession, control and peaceful enjoyment of certain described real estate. The source of law to be applied in a property case is the law of the state in question. The Fifth Circuit Court of Appeals made this point unmistakably clear at an earlier stage of this litigation:

"Simply stated, plaintiffs' case is essentially a suit for the title and possession of real estate. This is an action at law. *White v. Sparkill Realty Corp.*, 280 U.S. 500, 50 S.Ct. 186, 74 L.Ed. 578 (1930). Questions involving the title and possession of real estate must be decided under state law and in a state court if no Federal or constitutional question is involved." *Lucas v. Hope*, 515 F.2d 243, 236 (5 Cir. 1976).

Unless this Court is prepared to overrule or seriously erode the doctrine of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), it simply cannot mandate what state property law ought to be as a matter of general common law. It can, of course, examine the property law which a state adopts to determine if it passes muster under the First and Fourteenth Amendments as it did in the *Hull* case, however, it cannot go further and say what the state's law ought to be to replace any rule which is found to be lacking.

B.

Implicit in the question presented by petitioners is the notion that prior decisions of this Court have nevertheless mandated that the Constitution allows only the implied trust doctrine approach to resolving church property disputes in a connectional church case. No decision of this Court so holds.

In *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872) this Court examined the general law which civil courts had applied on the subject of property held by churches and described three general rules, relying on state court decisions. The third rule governs in cases in which the religious congregation is connected by religious views and ecclesiastical government to a larger general organization. The rule for such cases and the one actually applied by the Court to the facts before it is as follows:

"Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property." 80 U.S. 666, 676.

The existing congregation or its regular successor is determined by looking to the group recognized by

the larger denomination regardless of doctrinal disputes. 80 U.S. at 676. This rule was fashioned in 1872 and was a rule of general common law rather than state law as was the practice then in force under *Swift v. Tyson*, 16 Pet. 1 (1842). See *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 115-16 (1952).

The Watson Court then noted that the English view (which had been applied in state court litigation between the same parties) is different. It awards the property to whichever group a civil court determines is still true to the original tenets and doctrine rather than the successor organization. In language which was later described as having a "clear constitutional ring"⁹, the Court found that the English rule is incompatible with the American principles of separation of church and state and the preponderant weight of authority in this country.

In *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, *supra*, this Court noted that Kedroff had converted the principle discussed in Watson concerning the English view into a constitutional mandate. 393 U.S. at 447. It went on to hold that Georgia's application of the English rule was prohibited by the First and Fourteenth Amendments. However, in so doing, the Court did not also find a mandate in the Constitution which required all states to adopt the approach applied in *Watson v. Jones*, *supra*. The opinion points out that there are neutral principles of law which can be applied in church property disputes without jeopardizing First Amendment values, and directs that the

⁹ 393 U.S. at 446 (1969).

departure-from-doctrine theory can play no role in future proceedings in the case. 393 U.S. at 449-50. Moreover, the Court denied a second petition for a writ of certiorari filed by the Presbyterian Church in the United States which sought to have the rule of property law discussed in *Watson v. Jones* elevated to constitutional status. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 396 U.S. 1041 (1970)¹⁰.

On the same day this Court also decided *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, *supra*, wherein it sanctioned the resolution of a church property dispute by a method other than the implied trust doctrine. This case was pending at the time of the *Hull* decision and was remanded to the Maryland Court of Appeals for further consideration in light of the decision in *Hull*. 393 U.S. 528 (1969). The Maryland Court of Appeals reaffirmed its previous ruling which was based on the application of neutral principles of property law developed for use in all church property disputes. *Maryland and Virginia Eldership v. Church of God*, 254 A.2d 162 (1960). The case was again brought before this Court and the appeal was dismissed for lack of a substantial federal question. 396 U.S. 367 (1970).

¹⁰ Question Presented: Did Georgia Supreme Court abridge freedom of religion, in violation of First Amendment, and violate Fourteenth Amendment's Due Process Clause by eliminating implied trust doctrine that imposes trust upon local church property in favor of mother church, thus overruling decision of duly constituted church tribunal and transferring control of local church property from mother church to dissident members of local congregation who failed to seek any redress through procedures established by church government?

In a concurring opinion Justice Brennan stated that in his view the states are not limited or restricted to any one particular approach to settling church property disputes. He then suggested three possible solutions which would be proper as long as doctrinal matters are involved: (1) the implied trust doctrine as applied in *Watson v. Jones*, (2) neutral principles of law developed for use in all property disputes, and (3) special statutes governing the property of a particular denomination. 396 U.S. at 368-70.

There is nothing in the Court's opinion in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) which is in conflict with the views expressed by Justice Brennan or which mandates the use of the implied trust doctrine. In that case the Illinois Supreme Court was found to have impermissibly rejected the decisions of the highest church tribunals:

"For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunals within a church of hierachial polity, but must accept such decisions as binding on them, *in their application of the religious issues of doctrine or polity before them.*" 426 U.S. at 709 (emphasis added).

The issues before the Court in that case were quintessentially religious, i.e., who is the real archbishop and was the Diocese properly reorganized into

three divisions? It would be impossible to decide such questions without deferring to the decisions of higher church authorities.

However, the "application of . . . religious issues of doctrine or polity" in property cases before civil courts has relevance only in states which have adopted the implied trust approach. In others such as Maryland and Georgia, there is no occasion to determine what the highest religious tribunals might have decided on a particular issue. The neutral principles approach of these states focuses on the status of things as of the schism. It resolves the dispute by looking to deeds, state law on holding property by religious associations, local church corporation charters and the property provisions of the general church constitution or discipline. It attaches no significance to any after-the-fact action taken by either side before a church tribunal, and properly so as this could lead to a re-entry of the ecclesiastical thicket which the neutral principles approach completely avoids.

III.

As discussed above, we do not believe that this Court has, can or should undertake to mandate the approach which the states should follow in resolving church property disputes. Petitioners nevertheless argue that such a ruling is necessary because of alleged confusion and conflict attending the application of First Amendment principles in cases litigated in other states. In the first place, we doubt if any such confusion actually exists. With the exception of *Baldwin v. Mills*, 344 So.2d 259 (Fla. App. 1977), the general

Presbyterian denomination or the group recognized by it appears to have prevailed in all of the cases from other states cited in the Petition. The Petition refers to only three cases involving other denominations, the Protestant Episcopal Church and the Church of God, which suggests that any confusion in litigation involving those churches is slight, if it exists at all.

Notwithstanding the law review articles cited by Petitioners concerning any confusion in the state courts, we believe that the principles laid down by this Court are unmistakably clear. *Hull* holds that church property controversies cannot be "made to turn upon the resolution by civil courts of controversies over religious doctrine and practice." Therefore, "(s)tates, religious organizations and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." 393 U.S. at 449. *Serbian* extends this principle to disputes over church polity and church administration as well as property cases. 426 U.S. at 710. In addition, it discusses and severely limits the *Gonzalez*¹¹ exception.

If other states are unable to conform their church property decisions to these requirements, it will be time enough to resolve any confusion when those cases are actually lost by the denomination and appealed.

¹¹ *Gonzalez v. Archbishop*, 280 U.S. 1 (1929).

CONCLUSION

For the foregoing reasons, respondents respectfully suggest that the Supreme Court of Georgia did not err in affirming the trial court, that there is no conflict with applicable decisions of this Court, and the writ should therefore be denied.

Respectfully submitted,

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